

REMARKS

The above listed claim amendments along with the following remarks are fully responsive to the Office Action set forth above. In that Office Action, the Examiner rejected claims 28 and 30-34. By this Amendment and Response, claim 28 is amended. No new matter has been added. Claims 28 and 30-34 are currently pending.

Claim Rejections – 35 USC § 103(a)

Claims 28 and 30-34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,508,756 (“Kung”) in view of U.S. Patent 4,957,477 (“Lundback”).

Without acquiescing, the Applicant has amended independent claim 28 to further clarify certain claimed features. Claim 28 as amended recites a passive cardiac support device comprising a jacket for exerting a variable amount of pressure on the heart as a function of an amount of dilation of the heart, the jacket being constructed from an elastic and radiopaque biomedical material. Neither the Kung or Lundback patents, whether alone or in combination, teach or suggest the claimed combination or its associated advantages.

Rather, the Kung patent discloses in relevant part, a “girdle” made up of interlinked plastic rings, the purpose of which is to “limit the maximum diastolic dimension of the heart, while offering no resistance to systolic ejection.” *See* Col. 19, ll. 15-25. The rings “are free to move in all directions without restraint, since none are physically connected to each other.” *See* Kung at Col. 19, ll. 25-27. As understood by the Applicant, the girdle of the Kung patent can freely expand to its predetermined dimensions, at which point the interlocked rings will limit further expansion. The Kung patent does not disclose or suggest a jacket for exerting a variable amount of pressure on the heart as a function of an amount of dilation of the heart.

The Lundback patent discloses a fluid-filled heart assist jacket configured to treat a heart in which the regulatory function of the ventricular septum is impaired, e.g., due to an infarction. *See, e.g.*, Lundback at Col. 2, lines 1-21; Col. 2, line 65 – Col. 3, line 29. Some embodiments of the Lundback device are also configured to regulate the relative volumes of the atria and the ventricles. *See, e.g.*, Lundback at Col. 3, lines 43-53; Col. 5, lines 52-64.

The Lundback patent makes no mention of dilation of the heart, much less teach or suggest a jacket for exerting a variable amount of pressure on the heart as a function of an amount of dilation of the heart.

Accordingly, the Applicant submits that neither the Lundback patent nor the Kung patent, alone or in combination, disclose, teach, or suggest the invention as recited in claim 28. The Applicant believes that claim 28 is patentable over the prior art of record. Additionally, claims 29 and 30-34 depend either directly or indirectly from claim 28 and thus are believed to be patentable over the prior art of record for at least the same reasons.

Conclusion

In conclusion, all pending claims are believed to be in condition for allowance. The Applicant respectfully requests that a Notice of Allowance be issued in this case.

Respectfully Submitted,

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